



The Law Society of Saskatchewan

MURRAY THOMAS TRUNKS

October 28, 2013

Law Society of Saskatchewan v. Trunks, 2013 SKLSS 11

**IN THE MATTER OF THE LEGAL PROFESSION ACT, 1990
AND IN THE MATTER OF MURRAY THOMAS TRUNKS,
A LAWYER OF SASKATOON, SASKATCHEWAN**

**DECISION OF THE HEARING COMMITTEE FOR THE
LAW SOCIETY OF SASKATCHEWAN**

1. The Hearing Committee of the Law Society of Saskatchewan (the "Hearing Committee"), comprised of Thomas Healey as Chair and Brenda Hildebrandt, Q.C., convened on Monday, October 28, 2013 to hear this matter. Counsel for the Conduct Investigation Committee was Timothy F. Huber. Murray Thomas Trunks (the "Member") represented himself. All parties participated by conference call.
2. Neither Mr. Huber nor Mr. Trunks had any objections to the constitution of the Hearing Committee, the conference call format for the hearing, or any other matter relating to the proceedings giving rise to the hearing.
3. Mr. Huber and Mr. Trunks filed an Agreed Statement of Facts, a copy of which is attached to this decision.
4. The Formal Complaint, dated May 8, 2013, alleged that the Member is guilty of conduct unbecoming a lawyer in that he:

Did fail to respond to a fellow member of the Law Society of Saskatchewan within a reasonable time in relation to the Estate of V.E.A.
5. After receiving the Agreed Statement of facts and hearing the submissions of Mr. Huber and Mr. Trunks, the Hearing Committee accepted the Member's guilty plea to the allegation and determined that Murray Thomas Trunks is guilty of conduct unbecoming a lawyer as outlined in the Formal Complaint.

6. The facts which led to the Formal Complaint are described in the Agreed Statement of Facts. The Law Society began an investigation into the Member after receipt, in February 2013, of information from Mr. M, a fellow member of the Law Society, alleging that the Member had persistently failed to respond in the context of an Estate matter.

7. At the hearing, the Member candidly admitted that he could have, and should have, responded to Mr. M and dealt with the relevant estate matter promptly. The Member has realized his error, and regrets his failure to respond within a reasonable time frame. He was also candid in acknowledging that he did not have an excuse for his failure to respond.

8. Mr. Huber and Mr. Trunks both requested and agreed that the Hearing Committee determine the penalty in this matter. They provided a joint submission on the penalty, proposing that the Hearing Committee order a reprimand, a global fine of \$500.00, and order costs of \$1,135.00 against the Member.

9. Counsel for the Conduct Investigation Committee referred the Hearing Committee to several cases, including:

- a. *Law Society of Saskatchewan v. Charlen Werry, 2010 LSS 3*
- b. *Law Society of Saskatchewan v. Anne Elizabeth Hardy, 2011 LSS 6*
- c. *Law Society of Saskatchewan v. Cheryl Kloppenburg, 2001 LSS3*

10. Mr. Huber noted that this is the first discipline matter for the Member with the Law Society, and that it pertained to only one file.

11. The Hearing Committee reserved its decision on the penalty.

12. The Hearing Committee considers the three cases referenced by Mr. Huber to be of assistance in determining an appropriate sanction in this matter. The Hearing Committee also regards the recent decision of the *Law Society of Saskatchewan v. Dwayne James Stonechild 2013 LSS 8* to be instructive.

13. As outlined in the attached Agreed Statement of Facts, the Member failed to respond to Mr. M, and failed to honor the commitments he had made, despite repeated requests and reminders from Mr. M. The Hearing Committee considers this to be a problem, which must be addressed. As was noted in the *Werry and Stonechild* decisions, a failure to respond to another lawyer's request affects the reputation of both members, increases costs to clients, creates unnecessary delay, and negatively impacts the reputation of all lawyers in Saskatchewan.

14. The Hearing Committee considers the following comments from *Werry* to be pertinent:

“ As a guideline three requests from a client, another lawyer or the Society, with a reasonable deadline given to respond should be sufficient to justify a complaint to the society. Of course it is understood that the requests have to be reasonable in terms of deadline and frequency. It is hard to lay down a firm rule because situations vary with the circumstances but it is possible to suggest a guideline for

members. Again, if a member fails to respond to the third request for a response given with reasonable timelines, then the client or member being ignored should consider filing a complaint with the Law Society. Put another way, the fourth letter should be to the Law Society with a carbon copy to the non-responding member. It is obvious that any complaint filed with the Society will be analyzed by the staff and the Investigations Committee for reasonableness in terms of the urgency of the matter, frequency of the requests and reasonableness of the deadlines given to respond.``

15. Members who fail to respond should remember that it is not only a matter of courtesy and good practice, but also a requirement of the Code of Conduct, to respond in a prompt manner. For example:

A) The Code of Conduct, Chapter XVI provides as follows:

Responsibility to Lawyers Individually

RULE

The lawyer`s conduct toward other lawyers should be characterized by courtesy and good faith.

Commentary

Guiding Principles

6. The lawyer should answer with reasonable promptness all professional letters and communications from other lawyers that require an answer and should be punctual in fulfilling all commitments.

Footnote

6. Alta. 20: Failure to reply to letters or other communications from another member is at the very least discourteous ... this practice frequently places the other member in an awkward and embarrassing position ... and tends to lower the reputation of the whole profession.

16. The Hearing Committee notes that in response to Mr. M's various queries regarding the status of the probate application, the Member repeatedly assured Mr. M that he would be filing probate documents forthwith. However, despite continued requests from Mr. M during the period June 10, 2011 through February 5, 2013, the Member failed to file the probate documents. Indeed, the Application for Letters Probate was not filed until March 5, 2013, shortly after the Member became aware that Mr. M had, on February 23, 2013, filed a complaint with the Law Society. The recurring failure to respond is of concern to the Hearing Committee, as is the Member's failure to fulfill, in a timely way, the commitments he had made to Mr. M. It is the view of the Hearing Committee that the Member's conduct toward Mr. M cannot be characterized as either courteous or in good faith.

17. In this case the Hearing Committee notes that the Member admitted his culpability and fully accepted responsibility for his actions. He had also, on March 5, 2013, expressed his apologies to Mr. M.

18. The Hearing Committee finds the penalty requested in the joint submission appropriate, within the range of penalties for similar matters, and not contrary to the public interest.

19. The Hearing Committee therefore orders that:

- a. Murray Thomas Trunks shall receive a reprimand;
- b. Murray Thomas Trunks shall pay a fine to the Law Society of Saskatchewan in the amount of \$500.00, on or before January 31, 2014; and
- c. Murray Thomas Trunks shall pay costs of these proceedings to the Law Society of Saskatchewan in the amount of \$1,135.00, on or before January 31, 2014.

DATED at the City of Melfort, in the Province of Saskatchewan, this 11th day of December, 2013.

“Thomas Healey”
Chair, Hearing Committee

DATED at the Town of Moosomin, in the Province of Saskatchewan, this 11th day of December, 2013.

“Brenda Hildebrandt, Q.C.”
Member, Hearing Committee

AGREED STATEMENT OF FACTS AND ADMISSIONS

In relation to the Formal Complaint dated May 8, 2013, alleging the following:

THAT MURRAY THOMAS TRUNKS, of the City of Saskatoon, in the Province of Saskatchewan:

- 1. did fail to respond to a fellow Member of the Law Society of Saskatchewan within a reasonable time in relation to the Estate of V.E.A.**

Jurisdiction:

20. Murray Thomas Trunks (hereinafter “the Member”) is, and was at all times material to this proceeding, a practicing Member of the Law Society of Saskatchewan (hereinafter the “Law Society”), and accordingly is subject to the provisions of *The Legal Profession Act*, 1990 (hereinafter the “Act”) as well as the *Rules of the Law Society of Saskatchewan* (the “Rules”). Attached at **Tab 1** is a Certificate of the Executive Director of the Law Society of Saskatchewan pursuant to section 83 of the Act confirming the Member’s practicing status.

21. The Member is currently the subject of a Formal Complaint initiated by the Law Society dated May 8, 2013. The Formal Complaint is comprised of the allegation noted above. The original Formal Complaint was served upon the Member on May 8, 2013. Attached at **Tab 2** is a copy of the original Formal Complaint along with proof of service in the form of an Acknowledgement of Service. The Member intends to plead guilty to the allegation set out in the Formal Complaint.

Background of Complaint:

22. The Law Society began an investigation into the Member after receipt of a letter dated February 23, 2013 from the complainant Mr. M. The issue particularized below flowed from the ensuing investigation.

Particulars of Conduct:

23. On June 10, 2011, Mr. M. wrote to the Member indicating that he understood him to be the solicitor for the Estate of V.E.A., and that he (Mr. M.) represented the purchasers of certain properties from the Estate. V.E.A. passed away on April 22, 2010. The Member did not reply to Mr. M.'s June 10, 2011 letter.

24. Mr. M. sent a second letter on June 20, 2011 and left a phone message on July 4, 2011. The Member did not reply.

25. Mr. M. spoke to the Member on July 13, 2011. In that call, he was advised that the application for probate had not yet been submitted. He was also advised by the Member that he would receive a confirming letter when the application was filed. No such letter was received.

26. Mr. M. wrote to the Member on August 31, 2011 and September 7, 2011. The Member replied on September 12, 2011 indicating he expected to proceed to probate in 7 – 10 days.

27. On March 12, 2012, Mr. M. phoned the Member, who indicated he had not filed for probate, but was now in a position to make application and would do so.

28. Mr. M. left messages on April 10, 2012 and April 23, 2012, but did not receive a response.

29. Mr. M. spoke to the Member by phone on May 21, 2012. At that time, the Member indicated the application had not been submitted; that “he was sorting out issues” and that he would keep Mr. M. informed.

30. Mr. M. spoke with the Member again on June 20, 2012 and July 11, 2012. Each time, the Member indicated he would get back to Mr. M. with details. He did not.

31. Mr. M. left a message on July 17, 2012. He also wrote on both July 23, 2012 and August 27, 2012.

32. On September 3, 2012, the Member sent a fax cover sheet with a handwritten note acknowledging receipt of Mr. M.'s August 27, 2012 letter and indicating he would be contacting

the Executor and “Once I have spoken with him I will forward you the reply letter that you have requested.”

33. Mr. M. sent another letter on October 4, 2012. He also spoke to the Member by telephone on October 12, 2012 at which time the Member indicated he would be submitting the application for probate by December 31, 2012.

34. On November 14, 2012, Mr. M. spoke with the Member who indicated he would provide an update by November 30, 2012. No update was received.

35. Mr. M. attempted to contact the Member on January 24, 2013 and again on January 25, 2013, at which time they did speak. He also stated he would call Mr. M. the next Monday (January 28th, 2013). No call was received by Mr. M.

36. Mr. M. wrote again on February 5, 2013. No response was received.

37. Mr. M. filed a complaint with the Law Society of Saskatchewan on February 23, 2013.

38. On March 5, 2013, the Member confirmed in writing to Mr. M. that the Application for Letters Probate was filed at the Court on the same date. He also expressed his apologies to Mr. M. and his clients.

39. In the Member’s response of March 7, 2013 to the Law Society, he provided the following comments:

- An acknowledgement of failing to fulfill the obligation to Mr. M. in providing responses/replies to his letters/phone calls; and
- An acknowledgement that “Mr. M. deserved better from our office and we have offered our apology to him and to his respective clients”.

Prior History

40. The Member was the subject of a referral to the Professional Standards Committee in 2006 and 2007 in connection with three separate complaints.

41. The Member has no other discipline history.